

FEDERAL ELECTION COMMISSION

**999 E Street, N.W.
Washington, D.C. 20463**

RECEIVED
FEDERAL ELECTION COMMISSION
OCT 5 2016

2016 OCT -5 AM 9:35

SENSITIVE

FIRST GENERAL COUNSEL'S REPORT

MUR: 7005

CELA

DATE COMPLAINT FILED: 02/01/2016

DATE OF NOTIFICATION: 02/05/2016

LAST RESPONSE RECEIVED: 07/25/2016

DATE ACTIVATED: 07/20/2016

ELECTION CYCLE: 2012

EXPIRATION OF SOL: 08/20/2016 – 06/10/2017¹

COMPLAINANT:

Tyler Erdman

RESPONDENTS:

Adam H. Victor

TransGas Development Systems, LLC

Gas Alternative Systems, Inc.

Project Orange Associates LLC

Adam Victor & Son LLC

Adam Victor Grantor Trust

Marta Dani (formerly Marta Grabowska)

Nana Yoshioka

Randall Harris

Garry Coulter

Noel Daley

Michael C. J. Vanderkemp

Jo-Ann Bruggemann

Adam Victor, Jr.

Alexia Victor

Alicia Victor

Jo-Ayla Victor

2016 OCT -5 AM 9:48

¹ The Complaints in these matters were filed more than four years after the alleged violations, which all date from 2011 and early 2012. Victor, the businesses he owns or controls, and the individuals named as conduits tolled the statute of limitations ("SOL") in exchange for extensions of time to respond to the Complaints, and the SOL dates listed here reflect that tolling. The SOL expired in August 2016 on \$40,000 of alleged contributions in the name of another. The reason to believe recommendations address \$23,000 in allegedly reimbursed contributions remaining within the statute of limitations.

MUR: 7056

DATE COMPLAINT FILED: 04/28/2016

DATE OF NOTIFICATION: 05/05/2016

SUPPLEMENTAL COMPLAINT FILED:
06/21/2016

LAST RESPONSE RECEIVED: 09/09/2016

DATE ACTIVATED: 07/20/2016

ELECTION CYCLE: 2012

EXPIRATION OF SOL: 12/01/2016 – 06/10/2017

COMPLAINANT:

Tyler Erdman

RESPONDENTS:

Adam H. Victor

Jo-Ann Bruggemann

Adam Victor, Jr.

Alexia Victor

Alicia Victor

Jo-Ayla Victor

Marta Dani (formerly Marta Grabowska)

Nana Yoshioka

Randall Harris

Garry Coulter

Transnational Management Systems LLC

Transnational Management Systems II, LLC

Herman Cain

Friends of Herman Cain and Mark J. Block in his
official capacity as treasurer

Roberto Larrinaga

Pegasus Elite Aviation, Inc.

USA Risk Intermediaries LLC

**RELEVANT STATUTES
AND REGULATIONS**

52 U.S.C. § 30116(a)(1)(A)

52 U.S.C. § 30116(f)

52 U.S.C. § 30118(a)

52 U.S.C. § 30122

11 C.F.R. § 110.1(e)

11 C.F.R. § 110.1(g)

11 C.F.R. § 110.4(b)

INTERNAL REPORTS CHECKED:

Disclosure Reports

AGENCIES CHECKED:

None

I. INTRODUCTION

The two Complaints allege that Adam H. Victor or businesses that he owns or controls made \$63,000 in contributions in the names of employees, business associates, and members of Victor's family to two candidate committees, Manchin for West Virginia and Friends of Herman Cain, in violation of the Federal Election Campaign Act of 1971, as amended (the "Act").² The MUR 7056 Complaint further alleges that Victor and other businesses made an in-kind contribution to Herman Cain and Friends of Herman Cain by leasing them a jet at a below-market price. Respondents argue that the money Victor or one of his companies transferred to his employees and business associates was not for contributions, but for legitimate, non-political reasons. Further, they contend that the plane was leased at more than fair market value.

As explained more fully below, the available information supports a reasonable inference that Victor and one of his companies, TransGas Development Systems, LLC, made contributions in others' names. The record shows that the purported contributors received money from Victor and this company close in time to, and in the same amounts as, the contributions. Further, five of the contribution checks, which Victor's family members purportedly used to make contributions, were drawn on a bank account that Victor controlled, the checks did not have the family members' names on them, and they were consecutively numbered. Finally, Complainant and one Respondent allege that Victor asked them to make contributions that he would reimburse. Thus, we recommend that the Commission find reason to believe that Adam H. Victor and TransGas Development Systems LLC, made contributions in the names of others. Consistent with the Commission's practice in similar cases, we recommend that the Commission take no

² Manchin for West Virginia is the principal campaign committee for Joe Manchin III, a candidate for the United States Senate from West Virginia in 2012. Friends of Herman Cain is the principal campaign committee for Herman Cain, a candidate for President in 2012.

1 action at this time as to the conduits and recipients. Regarding the airplane lease, we recommend
2 that the Commission find no reason to believe that the Victor Respondents, Pegasus Elite
3 Aviation, Inc., Herman Cain, and Friends of Herman Cain made or accepted an excessive or
4 prohibited contribution because there is sworn, expert information before the Commission that
5 the Cain Committee paid at least fair market rates for use of the plane.

6 **II. CONTRIBUTIONS IN THE NAME OF ANOTHER (MURs 7005 AND 7056)**

7 **A. Facts**

8 Victor owns and controls a variety of businesses, including Respondents TransGas
9 Development Systems, LLC ("TGDS"), Project Orange Associates, LLC ("POA"), and Adam
10 Victor Grantor Trust. Since 2002, Victor has made at least 41 contributions totaling more than
11 \$212,000 to Federal candidates and committees, including Manchin for West Virginia
12 ("Manchin Committee") and Friends of Herman Cain ("Cain Committee").³

13 Victor organized a fundraising event for Manchin that occurred on March 29, 2011, the
14 same date as many of the contributions described in the MUR 7005 Complaint.⁴ The
15 contributions made on or about March 29, 2011,⁵ total \$40,000 and were made by family
16 members, Victor employees, and business associates. Victor also solicited contributions for
17 Cain,⁶ and he served on the host committee for a November 11, 2011, fundraiser for the Cain

³ Victor contributed the maximum allowable amount to the Manchin Committee for the 2012 Primary and General Elections when he made two \$2,500 contributions on March 29, 2011, and made the maximum allowable contribution to the Cain Committee for the 2012 Primary Election when he contributed \$2,500 on January 17, 2012.

⁴ Victor and most of the other Respondents identified in the MUR 7005 and 7056 Complaints — a group that includes Victor's family members, businesses, employees, and associates — filed a joint response to both matters ("Victor Response"). See Victor Resp. at 3-4 (June 8, 2016).

⁵ The Complaint identifies the Victor children as contributing to the Manchin Committee on March 29, 2011, but the Manchin Committee disclosed these contributions as being made on March 30, 2011. See MUR 7005 Compl. at 16 -21; Manchin Committee 2011 April Quarterly Report (January 24, 2012) at 28-30, available at <http://docquery.fec.gov/pdf/169/11020142169/11020142169.pdf>.

⁶ See Victor Resp., Victor Decl. ¶ 6.

1700442500

1 Committee.⁷ There are currently 10 contributions that have not expired under the SOL: a \$2,500
2 contribution to Cain dated two days before the event; seven others totaling \$15,500 dated
3 January 17, 2012, which may be related to that event; and two \$2,500 contributions to the
4 Manchin Committee on December 30, 2011.⁸

5 The Complainant, a former employee of Victor,⁹ alleges that Victor or his businesses
6 made contributions to the Manchin and Cain Committees through the following "straw
7 donors," who are Victor employees, business associates, and family members:

⁷ See MUR 7056 Compl. at 9 (¶ 51) (Apr. 28, 2016). A copy of the event program identifying Victor as a member of the Host Committee for the event is attached to the Supplement to the MUR 7056 Complaint ("Supplement") (Photocopy of Invitation to Cain Fundraising Event) (June 21, 2016).

⁸ Of the eight contribution checks made payable to the Cain Committee, only the Marta Dani contribution, dated November 9, 2011, was received about the same time as the November 11, 2011, fundraiser. The Complaint and the Cain Committee's disclosure reports show the other contributions were received on January 17, 2012. Cain Committee 2012 April Quarterly Report (Apr. 13, 2012) at 12, 14, 16, and 17, available at <http://docquery.fec.gov/pdf/063/12970923063/12970923063.pdf>.

The MUR 7056 Complaint also indicates that the Cain Committee and Garry Coulter, one of the alleged conduits in this matter, communicated about gathering contributions in connection with this fundraiser on behalf of Victor. In one email, Coulter noted that he had included a list of people that Victor had invited to the November 11, 2011, fundraiser. Subsequently, Victor allegedly presented the Cain Committee with at least eight separate \$2,500 checks, totaling at least \$20,000, on or about November 11, 2011, the day of the Cain Committee fundraiser. Supplement at 4 (¶ 10) (June 21, 2016). According to the Cain Committee, Coulter, not Victor, forwarded the checks. Cain Committee Resp. at 4 (Aug. 9, 2016).

⁹ Complainant Tyler Erdman and Victor appear to have an acrimonious relationship. Erdman previously worked for Victor as an information technology professional and alleges that he learned of Victor's "straw man" contribution scheme while he was an employee of Victor or his businesses. See MUR 7005 Compl. at 2 (¶¶ 4-5) (Feb. 1, 2016); Victor Resp. at 3. Erdman alleges that Victor sexually harassed women who have filed claims against Victor. MUR 7005 Compl. at 25-29 (¶¶ 131-158). Victor accuses Erdman of stealing his computer files, which is the subject of an ongoing lawsuit, and he alleges that Erdman is "conferring and assisting [Victor's] adversaries in unrelated business litigation," including a suit between Victor and one of the respondents in MUR 7056, Pegasus Elite Aviation, Inc. Victor Resp. at 3.

17044424531

Name	Recipient	Amount	Contribution Date	Alleged Victor Payment(s) ¹⁰	Respondent's Explanation for Payments
Marta Dani (fka Grabowska)	Manchin Committee	\$5,000 ¹¹	3/29/11	\$5,000 ¹²	Reimbursement for interior design purchases; contribution to her IRA ¹³
Nana Yoshioka	Manchin Committee	\$5,000	3/29/11	\$5,000 ¹⁴	Reimbursements for dental expenses ¹⁵
Noel Daley	Manchin Committee	\$5,000	3/29/11	\$5,000	"The unidentified payments were not paid to [Respondent]" ¹⁶
Michael C.J. Vanderkemp	Manchin Committee	\$5,000	3/29/11	\$5,000	Same ¹⁷
Jo-Ann Bruggemann	Manchin Committee	\$2,500	3/29/11	\$2,500	Same ¹⁸
Adam Victor, Jr.	Manchin Committee	\$2,500	3/30/11	\$2,500	Same ¹⁹
Alexia Victor	Manchin Committee	\$5,000	3/30/11	\$5,000	Same ²⁰
Alia Victor	Manchin Committee	\$5,000	3/30/11	\$2,500	Same ²¹
Jo-Ayla Victor	Manchin Committee	\$5,000	3/30/11	\$2,500	Same ²²

¹⁰ While the Complaint alleges that Victor made payments to the contributors at issue around the time of the contributions, we only have supporting information as to some of them.

¹¹ This \$5,000 contribution amount and the others shown in the chart reflect a \$2,500 contribution for the primary election and a \$2,500 contribution for the general election.

¹² The Complaint alleges that two of the Victor Entities, POA and the Adam Victor Grantor Trust, issued Dani two checks numbered 1440 and 2231, respectively, on or about the dates of the contributions. MUR 7005 Compl. at 6 (¶ 22).

¹³ Victor Resp., Dani Decl. ¶ 3. Dani included a federal tax form for 2011 showing an undated \$2,500 contribution to her IRA. The form itself is dated May 22, 2012. *Id.*

¹⁴ See Victor Resp., Yoshioka Decl. (photocopies of checks accompanying Declaration).

¹⁵ Victor Resp., Yoshioka Decl. ¶ 3.

¹⁶ Victor Resp., Daley Decl. ¶ 3.

¹⁷ Victor Resp., Vanderkemp Decl. ¶ 3.

¹⁸ Victor Resp., Bruggemann Decl. ¶ 3.

¹⁹ Victor Resp., Adam Victor, Jr. Decl. ¶ 3.

²⁰ Victor Resp., Alexia Victor Decl. ¶ 3.

²¹ Victor Resp., Alia Victor Decl. ¶ 3.

²² Victor Resp., Jo-Ayla Victor Decl. ¶ 3.

1704442442

1

23

24

25

26

27

28

29

B. Analysis

1. Payments to Victor Employees and Business Associates Match the Contribution Amounts

As the chart shows, the record indicates that Victor paid employees and business associates amounts that matched the amounts of their contributions. This conclusion is supported by copies of checks provided in the Victor Response. For example, Randall Harris, a business associate of Victor, contributed \$2,500 to the Manchin Committee on December 30, 2011, one day after a \$2,500 check payable to Harris was drawn on an account of one of Victor's businesses, TransGas Development Systems, LLC ("TGDS").³⁰ TGDS also issued a \$2,500 check to Nana Yoshioka, a former Victor employee,³¹ on November 9, 2011, two days before the November 11, 2011, Cain Committee fundraiser in New York.³² Yoshioka previously made two \$2,500 contributions to the Manchin Committee on March 29, 2011, seven days after Victor issued a \$5,000 check from his personal account to Yoshioka. Further, Marta Dani (formerly known as Marta Grabowska) made three contributions totaling \$7,500.³³ She apparently received payments from the Victor or one of his companies matching the amount of

³⁰ The TGDS check, identified in the Complaint as check number 1252 but identified in the Victor Response as number 1256, lists "Reimbursement" on the "For" line. See MUR 7005 Compl. at 9 (¶¶ 35-36); Victor Resp., Harris Decl. (photocopies of checks accompanying Declaration). Harris denies he was an employee of Victor, and explains that at the time of the contributions at issue, the Mingo County Redevelopment Authority retained him to advance one of TGDS's projects, building a coal-to-gas plant in West Virginia. Harris Resp. (Feb. 18, 2016) (response filed solely by Harris prior to the Victor Response). Victor Resp. at 10, Harris Decl. ¶ 2.

³¹ At the relevant times, Yoshioka worked as a technical coordinator at Project Orange Associates LLC ("POA"), another of Victor's businesses, and as Victor's personal assistant. Victor Resp., Yoshioka Decl. ¶ 3.

³² See Victor Resp., Yoshioka Decl. (photocopies of checks accompanying Declaration).

³³ Marta Dani was POA's comptroller at the time of the contributions at issue. Victor Resp., Dani Decl. ¶ 2.

her contributions.³⁴ With respect to Garry Coulter, an executive at the company responsible for providing insurance to Victor's businesses,³⁵ the MUR 7005 Complaint alleges that Victor or his businesses control bank accounts at Signature Bank, and checks from those accounts issued to Coulter on or about the dates of the contributions.³⁶

2. Victor Family Contribution Checks from One Account

The January 17, 2012, contributions from Victor's wife (Jo-Ann Bruggemann) and his four children (Adam, Alexia, Alia, and Jo-Ayla Victor)³⁷ appear to have been made from one checking account that Victor apparently owned or controlled. According to the MUR 7056 Supplement, around the time of the November 11, 2011, Cain fundraiser, Victor presented five \$2,500 checks to the Cain Committee that did not show the names of the contributors.³⁸ A Cain Committee representative emailed Garry Coulter and asked him to help identify the five contributors.³⁹ The Cain Committee later sent Coulter a spreadsheet that lists Victor, his wife, and his children as contributors. According to this spreadsheet, the contributions by Victor's family were made with sequentially-numbered checks.⁴⁰ The Cain Committee confirms the authenticity of the emails and spreadsheet.⁴¹

³⁴ Unlike Harris and Yoshioka, Dani did not provide copies of any checks made out to her.

³⁵ At the time that he attended the November 2011 Cain Committee fundraiser and made the December 30, 2011, contribution to the Manchin Committee, Coulter worked at USA Risk Intermediaries, LLC, as an Executive Vice President. See USA Risk Intermediaries LLC Resp. (May 26, 2016).

³⁶ MUR 7005 Compl. at 10 (¶ 46). Coulter did not provide copies of any checks allegedly made out to him.

³⁷ According to publicly available sources, Adam, Jo-Ayla, Alia, and Alexia Victor made these contributions to the Cain Committee when they were 25, 23, 21, and 19 years old, respectively.

³⁸ Supplement at 4 (¶¶ 10, 13) (June 21, 2016).

³⁹ The Supplement to the MUR 7056 Complaint contains copies of these emails. *Id.* at 5-7 (¶ 15-22).

⁴⁰ *Id.* at 7 (¶ 22), Ex. E.

⁴¹ Cain Committee Resp. at 4 (Aug. 9, 2016).

1 Complainant alleges that Victor instructed Roberto Larrinaga, a Senior Client Associate
2 at Signature Bank, to withdraw \$12,500 from one of Victor's Signature Bank accounts in
3 Victor's name, or in the name of one of the businesses that he controlled, to cover the five checks
4 that were generated to make contributions to the Cain Committee.⁴² Larrinaga denies that he was
5 involved in any way.⁴³

6 The Victor Respondents did not refute the Complaint's allegations; instead, they
7 challenge the validity of the complaints and supplement.⁴⁴ For its part, the Cain Committee
8 ultimately disclosed the contributor information set forth on the spreadsheet, and asserts it had no
9 reason to question the authenticity of the contributions.⁴⁵

10 3. Allegations that Victor Attempted to Make Other Contributions in the
11 Names of Others
12

13 Complainant and Respondent Pegasus Elite Aviation, Inc. ("Pegasus") allege that Victor
14 asked others to participate in the alleged reimbursement scheme. Complainant alleges that

⁴² *Id.* at 8 (¶ 26). The Complainant maintains that he overheard Victor talking on the phone to Larrinaga in early November 2011 about generating checks for the Cain Committee fundraiser. *Id.* at 8 (¶ 27).

⁴³ Larrinaga avers in a declaration that he was on vacation at the time of the events and that when he "returned from vacation, [he] learned that Signature Bank had, on November 9, 2011, issued the five contribution checks at issue in this [MUR]." Roberto Larrinaga Resp. (May 24, 2016); Larrinaga Decl. ¶ 6. *See also* Larrinaga Decl. ¶ 8 (stating "[a]t no time did I assist Victor, or anyone else, to arrange to have money transferred from Victor's children's accounts at Signature Bank to the Committee to Elect Herman Cain.>").

⁴⁴ Victor Resp. to Supplement (July 25, 2016). Respondents assert that the MUR 7005 and MUR 7056 Complaints should be dismissed because the source of the information contained in the Complaints was not based on the Complainant's personal knowledge, and he has not identified the source of his information. *Id.* at 2. Respondents rely upon 11 C.F.R. § 111.4(d)(2), which requires that a complaint identify the complainant, be sworn and signed, and that the allegations in a complaint "not based upon personal knowledge" should identify the source of the information that "gives rise to the complainant's belief in the truth of such statements." Thus, the Commission's regulations do not require that complaints be based solely on personal knowledge or prohibit complaints based in information provided by third parties. On July 27, 2016, Victor filed another response which also did not address the allegation that the checks for the Victor family contributions were sequentially numbered. Victor Resp. to Supplement (July 27, 2016). Respondents continued to argue that the Complaint should be dismissed and included a transcript of the Complainant's recent deposition testimony in a civil suit concerning his alleged lack of personal knowledge of the banking information cited in both Complaints.

⁴⁵ Cain Committee Resp. at 5.

17044424519

1 Victor solicited him to be a "straw donor" shortly before the November 2011 Cain fundraiser,
2 but Complainant refused.⁴⁶ Pegasus alleges that Victor also asked individuals working at
3 Pegasus to contribute to various political candidates and promised that he would reimburse
4 them.⁴⁷ Pegasus's counsel states that when he deposed Victor in an unrelated civil action and
5 asked him if he disputed the Complainant's straw donor allegations, Victor repeatedly asserted
6 his Fifth Amendment right not to answer.⁴⁸

7 4. The Available Information Supports Finding Reason to Believe that Victor
8 and One of his Companies Made Contributions in the Names of Others
9

10 The Act provides that a contribution includes "any gift, subscription, loan, advance, or
11 deposit of money or anything of value made by any person for the purpose of influencing any
12 election for Federal office."⁴⁹ The term "person" for purposes of the Act and Commission
13 regulations includes partnerships, corporations, and "any other organization or group of
14 persons."⁵⁰ The Act prohibits corporations from making contributions to any federal candidate
15 or political committee and prohibits corporate officers and directors from consenting to such
16 contributions.⁵¹ An LLC that elects to be treated as a corporation by the Internal Revenue
17 Service or an LLC with publicly traded shares shall be considered a corporation for contribution
18 purposes.⁵² A contribution from an LLC that elects to be treated as a partnership shall be

⁴⁶ Supplement at 8 (¶ 28); MUR 7056 Compl. at 14 (¶ 70). Neither the Manchin Committee nor the Cain Committee disclosed any contribution from Complainant.

⁴⁷ Pegasus Resp. to Supplement (July 12, 2016).

⁴⁸ *Id.*

⁴⁹ 52 U.S.C. § 30101(8)(A).

⁵⁰ *Id.* § 30101(11); 11 C.F.R. § 100.10.

⁵¹ 52 U.S.C. § 30118(a).

⁵² 11 C.F.R. § 110.1(g)(3), (e)(1)-(2).

1 attributed to its members in direct proportion to their shares of the profits, or by agreement of the
2 partners, subject to restrictions,⁵³ or, in the case of a single-member LLC, to its sole member.⁵⁴

3 In the 2012 election cycle, the Act prohibited a person from making contributions to a candidate
4 which, in the aggregate, exceeded \$2,500 per election.⁵⁵ The Act further provides that no person
5 shall make a contribution in the name of another or knowingly permit his or her name to be used
6 to effect such a contribution.⁵⁶

7 The available information supports a reasonable inference that Victor and TGDS made
8 contributions in the names of others. Several of the alleged conduits acknowledge that they
9 received payments from Victor or his companies close in time to, and in the exact amounts of
10 their respective contributions. In addition, the sequentially numbered checks Victor's family
11 members purportedly used to make contributions all came from an account Victor apparently
12 controlled, and those checks did not have the contributors' names on them. Further, the
13 Complainant and Pegasus both contend that Victor asked them to participate in a straw donor
14 scheme.

15 Respondents offer a variety of explanations for the remarkable coincidences in time and
16 amount between the transfers they received and the contributions they purportedly made. But
17 these explanations do not seem nearly as likely as a much simpler one: Victor gave them money
18 for the purpose of making political contributions. Tellingly, none of the alleged conduits swear
19 that they made contributions with their own money.

⁵³ *Id.* § 110.1(g)(2), (e)(1)-(2).

⁵⁴ *Id.* § 110.1(g)(4).

⁵⁵ *Id.* See 11 C.F.R. § 110.1(b)(1).

⁵⁶ 52 U.S.C. § 30122. See also 11 C.F.R. § 110.4(b); *United States v. O'Donnell*, 608 F.3d 546, 549, 553 (9th Cir. 2010).

1 In fact, other than the contributions at issue here, almost all of the alleged conduits have
2 scant contribution histories. For example, only one of the alleged conduits had ever made a
3 federal contribution before the maximum \$2,400 contributions to the Manchin Committee in
4 September 2010,⁵⁷ maximum contributions to the Manchin Committee in March 2011, and
5 maximum contributions to the Cain Committee in January 2012.⁵⁸ Indeed, most of the alleged
6 conduits have made no other contributions besides their contributions to the Manchin and Cain
7 Committees.⁵⁹

8 As for Victor, only one paragraph of his 21-paragraph Declaration addresses the conduit
9 contribution allegation. Victor explains:

10 [t]o the best of [his] knowledge...the payments and/or checks alleged in the
11 complaints as being reimbursements for the identified contributions were, with
12 respect to Marta Dani, Nana Yoshioka and Gary [sic] Coulter, as stated in their
13 declarations - strictly for business, employee IRA contributions or personal
14 purposes, or with respect to the remaining individual respondents, as stated in
15 their declarations - were not made at all.⁶⁰

16
17 Victor does not specifically deny that he reimbursed the contributions; he merely relies on the

⁵⁷ Each of the nine contributors listed on the above chart who made a contribution to Manchin at the time of the March 29, 2011, fundraiser also contributed \$2,400 to Manchin on September 29, 2010, the maximum allowable limit at that time. Manchin Committee 2010 October Quarterly Report (Oct. 15, 2010), *available at* <http://docquery.fec.gov/pdf/290/10020881290/10020881290.pdf>. These contributions were not noted in either Complaint and are beyond the SOL.

⁵⁸ Garry Coulter is the lone exception. Before his contributions in 2011 and 2012, he had made eight contributions totaling \$4,750, according to the FEC contributor database.

⁵⁹ Besides Coulter, Alexia Victor, Jo-Ann Bruggemann, and Randall Harris are the only other alleged conduits who have made a contribution to an entity other than the Manchin and Cain Committees. Victor (as an eighteen year-old student) and Bruggemann contributed \$6,000 and \$10,000, respectively, to the WV State Democratic Executive Committee on October 25, 2010, the same date that Victor made a \$10,000 contribution to the same committee. WV State Democratic Executive Committee 2010 Post-General Report at 11, 12 (Dec. 2, 2010), *available at* <http://docquery.fec.gov/pdf/133/10992359133/10992359133.pdf>. And only Harris has made another federal contribution since the alleged reimbursements; on June 26, 2014, he made a \$250 contribution to the Nick Rahall campaign. Keep Nick Rahall in Congress Committee 2014 July Quarterly Report at 67 (July 15, 2014), *available at* <http://docquery.fec.gov/pdf/686/14961621686/14961621686.pdf>.

⁶⁰ Victor Resp., Adam H. Victor Decl. ¶ 7.

1 declarations of the alleged conduits. However, these conduits did not swear that they made
2 contributions with their own funds, nor did they expressly deny that Victor or one of his
3 businesses made contributions in their names. Instead, Harris, Yoshioka, and Dani swear that the
4 payments were for other purposes, such travel reimbursements, dental expenses, IRA
5 contributions, and home furnishings.⁶¹ However, it is extremely unlikely that all of these
6 activities had the same value, \$2,500, and they all happened at about the same time. Victor's
7 Declaration also does not specifically mention another alleged conduit, Randall Harris, among
8 the individuals whose reimbursements were "strictly for business."⁶² And Victor does not rebut
9 the first-hand reports that he asked the Complainant and Pegasus employees to be straw donors.

10 Further, Garry Coulter and all of Victor's family members signed sworn Declarations that
11 contain the same sentence: "*unidentified payments and/or checks referenced in [the MUR 7005*
12 *Complaint] were not paid to [Respondent].*"⁶³ But these brief declarations supply no other facts,
13 except to verify that each declarant is a Respondent and to explain how they are related to Victor.
14 They do not explain why the Cain Committee needed help determining who made which
15 contribution or why the contribution checks associated with the Victor family members were
16 consecutively numbered. In fact, these Respondents do not even swear they made contributions.
17 Indeed, the brief Declarations are not inconsistent with Victor simply paying for their
18 contributions.

⁶¹ Victor Resp., Harris Decl. ¶ 2, Yoshioka Decl. ¶ 3, Dani Decl. ¶ 3.

⁶² *Id.* In contrast, the unsworn portion of the Victor Response describes Harris's reimbursement as "strictly for business" but omits such a description of Coulter's contribution from the group. Victor Resp. at 4.

⁶³ Victor Resp., Coulter Decl. ¶ 3; *see* Declarations of Jo-Ann Bruggemann, Alexia Victor, Alia Victor, Jo-Ayla Victor, and Adam Victor, Jr. Coulter's Declaration attached to the joint Victor Response is not nearly as specific as his earlier unsworn response to the MUR 7005 Complaint, which he filed individually. In the earlier response, Coulter explicitly denies participating in a straw donor scheme and claims all of the payments he received were for management consulting services. Coulter Resp. at 1-2.

1 In summary, the available information, including the match between the amounts Victor
2 or his companies paid the contributors and the amount of their contributions, the timing of these
3 payments, the improbability that these events are coincidental, the sequential numbering of the
4 family contribution checks, the un rebutted allegation that Victor tried to reimburse more
5 contributions, the careful wording and weakness of the respondents' denials, and the paucity of
6 other contributions by the alleged conduits all support the conclusion that Victor or his
7 companies made contributions in the names of others.⁶⁴

8 Accordingly, we recommend that the Commission find reason to believe that Adam H.
9 Victor and TGDS violated 52 U.S.C. §§ 30116(a) or 30118(a),⁶⁵ and 30122 by making excessive
10 or prohibited contributions in the names of others to the Manchin and Cain Committees.⁶⁶
11 Consistent with usual practice, we recommend that the Commission take no action at this time
12 with respect to the other Respondents regarding the alleged reimbursements, pending an
13 investigation.

14 **III. ALLEGED EXCESSIVE CONTRIBUTION IN THE FORM OF A BELOW-**
15 **MARKET AIRPLANE LEASE (MUR 7056)**
16

17 The MUR 7056 Complaint also alleges that Victor and two of his LLCs, Transnational
18 Management Systems LLC ("TNMS") and Transnational Management Systems II, LLC
19 ("TNMS II"), made a prohibited or excessive in-kind contribution to the Cain Committee by

⁶⁴ See, e.g., MUR 6234 (Arlen B. Cenac, Jr., *et al.*) (Commission found reason to believe respondent knowingly and willfully violated the Act by directing the assistant manager of a bank to prepare six cashier's checks made payable to a political committee and listed the names and addresses of the "remitters" along with the specific amounts to appear on each check).

⁶⁵ We note that certain facts — such as the tax status of TGDS — are unclear. We intend to discover that information during the proposed investigation.

⁶⁶ There is information in the record that suggests that the apparent violations may have been knowing and willful, and we recommend that the Commission put Victor and TGDS on notice that the proposed investigation will address this issue. Should the proposed investigation uncover evidence that Victor or TGDS knowingly and willfully violated the Act, we will make the appropriate recommendations.

1704442451

1 leasing the committee an airplane at a reduced price.⁶⁷ According to the Complaint, Victor owns
2 Gulfstream jets through the two LLCs, and an outside firm, Pegasus, manages the jets.⁶⁸ The
3 Complaint alleges that, pursuant to an agreement between the LLCs and Pegasus, the usual
4 charter rate for use of the planes was \$5,000 per hour plus fuel and airport fees, but the Cain
5 Committee was charged only \$25,000 for five days, plus fuel and airport fees, allegedly a 75%
6 discount from the usual and normal charter cost.⁶⁹ In other words, the Complainant alleges that
7 Victor and the LLCs made in-kind contributions to the Cain Committee worth \$75,000, and the
8 Cain Committee did not disclose them.⁷⁰

9 Pegasus responds that the Cain Committee paid more than fair market value, not less, to
10 lease the plane owned by TNMS II.⁷¹ According to Pegasus, a customer would ordinarily pay an
11 hourly rate, and the typical charter rate at that time would have been \$5,000 per flight hour plus a
12 \$750 fuel surcharge.⁷² Under this calculation, the charge to Cain would have been \$171,925.⁷³
13 The Cain Committee, however, paid separately for landings and fuel; these items are usually
14 rolled into the hourly charge.⁷⁴ Cain paid a daily rate of \$5,000 for ten days, or \$50,000, plus

⁶⁷ MUR 7056 Compl. at 17 (¶ 80).

⁶⁸ *Id.* at 6-7 (¶¶ 31-34).

⁶⁹ *Id.* at 8, 12 (¶¶ 40-42, 58-60).

⁷⁰ *Id.* at 12-14 (¶¶ 61-63, 66-68).

⁷¹ Pegasus Resp. at 1, 6-8 (May 31, 2016). Pegasus is currently involved in a lawsuit with Victor. *See TransNational Management Systems, LLC et al. v. Pegasus Elite Aviation, Inc.* Ca. Spr. Ct., L.A. County, N.W. Dist., Case No. LC100724. The lawsuit is unrelated to the airplane service provided to the Cain Committee.

⁷² Pegasus Resp. at 5.

⁷³ *Id.* at 6.

⁷⁴ *Id.* at 7. Pegasus provided the invoices that the Cain Committee in fact paid for the flight services at issue, which reflect the \$5,000 daily charge. *Id.* Ex. 5.

1 \$112,350.15 in fuel costs, and \$60,000 in landing fees for a total amount of \$222,350.15.⁷⁵
2 Thus, according to Pegasus, Cain actually paid substantially more than the normal and usual
3 charge.⁷⁶ Victor similarly argues that he made more money leasing the aircraft to the Cain
4 Committee than in typical arrangements, and he supports that argument with a sworn declaration
5 from a certified senior aircraft appraiser.⁷⁷ The Cain Committee does not dispute the terms of
6 the lease, acknowledges that it paid the Pegasus invoices, and denies that it received any in-kind
7 contributions.⁷⁸

8 Respondents appear to have sufficiently refuted Complainant's allegation with a sworn
9 declaration from an apparently expert appraiser, and we have no contrary information.
10 Accordingly, we recommend that the Commission find no reason to believe that Adam H. Victor
11 or Transnational Management Systems II, LLC violated 52 U.S.C. §§ 30116(a) or 30118(a), and
12 no reason to believe that Pegasus Elite Aviation, Inc. violated 52 U.S.C. § 30118(a), by making a
13 prohibited in-kind contribution in connection with the aircraft lease to the Cain Committee. We
14 further recommend that the Commission find no reason to believe that the Cain Committee or
15 Herman Cain violated 52 U.S.C. §§ 30116(f) or 30118(a) by accepting the alleged in-kind
16 contribution. We also recommend that the Commission find no reason to believe that

⁷⁵ The two Pegasus invoices at issue in this matter reflect additional charges for flight attendants, catering, charges, flight phone charges and airport fees. See Pegasus Resp., Ex. 5. The Cain Committee's 2011 Year-End Report discloses the payment of the two invoices with a \$596.98 discrepancy apparently reflecting the difference highlighted between the catering estimate and the total catering charges due (\$194,754.95 instead of \$195,351.93). See Cain Committee Amended 2011 Year-End Report (Apr. 12, 2012) at 5043, 5078, available at <http://docquery.fec.gov/pdf/470/12970917470/12970917470.pdf>; Pegasus Resp., Ex. 5. The Cain Committee paid Pegasus for further use of the airplane on two more occasions: \$181,103.31 on December 1, 2011; and \$79,580 on December 6, 2011. *Id.* at 5105, 5125. In sum, the Cain Committee paid Pegasus \$516,108.01. See Cain Committee Resp. at 4.

⁷⁶ Pegasus Resp. at 7.

⁷⁷ Victor Resp. at 7, McDaniel Decl. ¶ 8.

⁷⁸ Cain Committee Resp. at 2-3.

Transnational Management Services LLC, which does not appear to have been involved in the airplane lease at issue, violated the Act.⁷⁹

IV. PROPOSED INVESTIGATION

Given the short amount of time left within the SOL, we propose to require the conduits to answer under oath whether they used their own funds to make the contributions at issue or whether they used funds Victor provided for that purpose. Further, we intend to seek documents, including bank records, regarding the checks that the alleged conduits claim were reimbursements or payments unrelated to contributions, and other relevant information regarding other payments Victor made to individuals. We intend to promptly ask the Commission to authorize serving Victor and other respondents with interrogatories and document requests.

V. RECOMMENDATIONS

1. Find reason to believe that Adam H. Victor violated 52 U.S.C. §§ 30116(a) or 30118(a), and 30122 in connection with alleged contributions in the name of another;
2. Find reason to believe that TransGas Development Systems, LLC violated 52 U.S.C. §§ 30116(a) or 30118(a), and 30122 in connection with alleged contributions in the name of another;
3. Find no reason to believe Adam H. Victor violated 52 U.S.C. §§ 30116(a) or 30118(a) in connection with the leasing of an airplane to Friends of Herman Cain;
4. Find no reason to believe that Transnational Management Systems II, LLC violated 52 U.S.C. §§ 30116(a) or 30118(a) and close the file as to it;
5. Find no reason to believe Pegasus Elite Aviation, Inc. violated 52 U.S.C. § 30118(a) and close the file as to it;
6. Find no reason to believe that Herman Cain or Friends of Herman Cain and Mark J. Block in his official capacity violated 52 U.S.C. §§ 30116(f) or 30118(a) and close the file as to it;

⁷⁹ TNMS did not respond to the Complaint, and is not represented by counsel for the other Victor Entities.

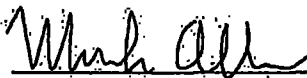
- 1 7. Find no reason to believe that Transnational Management Systems LLC violated
2 the Act and close the file as to them;
3
4 8. Take no action at this time with respect to Adam Victor, Jr., Alexia Victor, Alicia
5 Victor, Jo-Ayla Victor, Jo-Ann Bruggemann, Garry Coulter, Marta Dani
6 (formerly Marta Grabowska), Nana Yoshioka, Randall Harris, Transgas Energy
7 Systems LLC, Gas Alternative Systems, Inc., Project Orange Associates LLC,
8 Adam Victor & Son LLC, Adam Victor Grantor Trust, USA Risk Intermediaries
9 LLC, Noel Daley, Michael C. J. Vanderkemp, and Roberto Larranga with respect
10 to the alleged contributions in the name of another;
11 9. Approve the attached Factual and Legal Analyses;
12 10. Authorize the use of compulsory process, as necessary; and
13 11. Approve the appropriate letters.
14

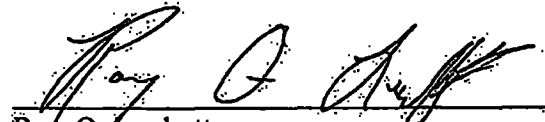
15 Lisa J. Stevenson
16 Acting General Counsel

17 Kathleen Guith
18 Acting Associate General Counsel
19 for Enforcement
20

21
22 10.5.16
23 Date

24 
25 Stephen Gura
26 Deputy Associate General Counsel for Enforcement
27

28 
29 Mark Allen
30 Assistant General Counsel
31

32 
33 Roy Q. Lockett
34 Attorney

1 **Attachments:**

2
3
4
5
6
7

2. Factual and Legal Analysis for Transnational Management Services II, LLC.
3. Factual and Legal Analysis for Herman Cain, Friends of Herman Cain and Mark J. Block in his official capacity as treasurer.
4. Factual and Legal Analysis for Pegasus Elite Aviation, Inc.

170444401

1 **FEDERAL ELECTION COMMISSION**

2
3 **FACTUAL AND LEGAL ANALYSIS**

4
5 **RESPONDENT:** Transnational Management Systems LLC

MUR 7056

6
7
8 **I. INTRODUCTION**

9 Complainant alleges that Transnational Management Systems LLC ("TNMS") made an
10 in-kind contribution to Herman Cain and Friends of Herman Cain ("Cain Committee") by
11 leasing them a jet at a below-market price. TNMS did not respond to the Complaint. As
12 discussed in further detail below, based on the available information, the Commission finds no
13 reason to believe that Transnational Management Systems LLC violated the Federal Election
14 Campaign Act of 1971, as amended (the "Act") in connection with the alleged in-kind
15 contribution.

16 **II. FACTUAL AND LEGAL ANALYSIS**

17 The Complaint alleges that TNMS and Transnational Management Systems II, LLC
18 ("TNMS II"), two LLCs of Adam H. Victor, leased an airplane to the Cain Committee at a
19 reduced price.¹ According to the Complaint, Victor owns Gulfstream jets through the two LLCs,
20 and an outside firm, Pegasus Elite Aviation, Inc. ("Pegasus"), manages the jets.² The Complaint
21 alleges that, pursuant to an agreement between the LLCs and Pegasus, the usual charter rate for
22 use of the planes was \$5,000 per hour plus fuel and airport fees, but the Cain Committee was
23 charged only \$25,000 for five days, plus fuel and airport fees, allegedly a 75% discount from the
24 usual and normal charter cost.³ In other words, the Complainant alleges that the LLCs and

¹ MUR 7056 Compl. at 17 (¶ 80).

² *Id.* at 6-7 (¶¶ 31-34).

³ *Id.* at 8, 12 (¶¶ 40-42, 58-60).

1 Victor made in-kind contributions to the Cain Committee worth \$75,000.⁴ The available
2 information, however, indicates that the Cain Committee leased the plane owned by TNMS II,
3 not TNMS. Because TNMS does not appear to have been involved in the airplane leasing at
4 issue, the Commission finds no reason to believe that TNMS violated the Act.

⁴ *Id.* at 12-14 (¶¶ 61-63, 66-68).

17044424401
843424401

1 **FEDERAL ELECTION COMMISSION**

2
3 **FACTUAL AND LEGAL ANALYSIS**

4
5 **RESPONDENTS:** Friends of Herman Cain and Mark J. Block **MUR 7056**
6 in his official capacity as treasurer
7 Herman Cain
8

9 **I. INTRODUCTION**

10 Complainant alleges that Adam H. Victor and other businesses made an in-kind
11 contribution to Friends of Herman Cain and Mark J. Block in his official capacity as treasurer
12 ("Cain Committee") and Herman Cain by leasing them a jet at a below-market price. Herman
13 Cain and the Cain Committee deny this allegation. As discussed in further detail below, based
14 on the available information, the Commission finds no reason to believe that the Cain Committee
15 or Herman Cain violated 52 U.S.C. §§ 30116(f) or 30118(a) by accepting the alleged excessive
16 or prohibited in-kind contribution.

17 **II. FACTUAL AND LEGAL ANALYSIS**

18 The Federal Election Campaign Act of 1971, as amended (the "Act"), prohibits
19 corporations from making contributions to any federal candidate or candidate committee, and
20 prohibits candidates and candidate committees from knowingly receiving such contributions.
21 52 U.S.C. § 30118(a). An LLC that elects to be treated as a corporation by the Internal Revenue
22 Service or an LLC with publicly traded shares shall be considered a corporation for contribution
23 purposes. 11 C.F.R. § 110.1(g)(3). A contribution from an LLC that elects to be treated as a
24 partnership shall be attributed to its members in direct proportion to their shares of the profits, or
25 by agreement of the partners, subject to restrictions or, in the case of a single-member LLC, to its
26 sole member. 11 C.F.R. § 110.1(g)(2), (4). In the 2012 election cycle, the Act limited a person
27 from making contributions to a candidate and candidate committee which, in the aggregate,

1 exceeded \$2,500 per election, and the Act prohibits these recipients from knowingly accepting
2 contributions in excess of the limits. 52 U.S.C. §§ 30116(a)(1)(A), 30116(f); 11 C.F.R.
3 § 110.1(b)(1).

4 The Complaint alleges that Adam H. Victor and two of his LLCs, Transnational
5 Management Systems LLC ("TNMS") and Transnational Management Systems II, LLC
6 ("TNMS II"), leased an airplane to the Cain Committee at a reduced price.¹ According to the
7 Complaint, Victor owns Gulfstream jets through the two LLCs, and an outside firm, Pegasus
8 Elite Aviation, Inc. ("Pegasus"), manages the jets.² The Complaint alleges that, pursuant to an
9 agreement between the LLCs and Pegasus, the usual charter rate for use of the planes was \$5,000
10 per hour plus fuel and airport fees, but the Cain Committee was charged only \$25,000 for five
11 days, plus fuel and airport fees, allegedly a 75% discount from the usual and normal charter
12 cost.³ In other words, the Complainant alleges that Victor and the LLCs made in-kind
13 contributions to the Cain Committee worth \$75,000, and the Cain Committee did not disclose
14 them.⁴

15 The available information suggests that the Cain Committee paid at least fair market
16 value to lease the plane owned by TNMS II. According to the available information, a customer
17 would ordinarily pay an hourly rate, and the typical charter rate at that time would have been
18 \$5,000 per flight hour plus a \$750 fuel surcharge. Under this calculation, the charge to Cain
19 would have been \$171,925. The Cain Committee, however, paid separately for landings and

¹ MUR 7056 Compl. at 17 (¶ 80).

² *Id.* at 6-7 (¶¶ 31-34).

³ *Id.* at 8, 12 (¶¶ 40-42, 58-60).

⁴ *Id.* at 12-14 (¶¶ 61-63, 66-68).

1 fuel; these items are usually rolled into the hourly charge. Cain paid a daily rate of \$5,000 for
2 ten days, or \$50,000, plus \$112,350.15 in fuel costs, and \$60,000 in landing fees for a total
3 amount of \$222,350.15.⁵ Thus, according to the available information, Cain paid at least the
4 normal and usual charge. A sworn declaration from a certified senior aircraft appraiser supports
5 this argument. The Cain Committee does not dispute the terms of the lease, acknowledges that it
6 paid the Pegasus invoices, and denies that it received any in-kind contributions.⁶

7 The available information appears to sufficiently refute Complainant's allegation.
8 Accordingly, the Commission finds no reason to believe that the Friends of Herman Cain or
9 Herman Cain violated 52 U.S.C. §§ 30116(f) or 30118(a) by accepting the alleged in-kind
10 contribution.

⁵ The two Pegasus invoices at issue in this matter reflect additional charges for flight attendants, catering, charges, flight phone charges and airport fees. The Cain Committee's 2011 Year-End Report discloses the payment of the two invoices with a \$596.98 discrepancy apparently reflecting the difference highlighted between the catering estimate and the total catering charges due (\$194,754.95 instead of \$195,351.93). *See* Cain Committee Amended 2011 Year-End Report (Apr. 12, 2012) at 5043, 5078, *available at* <http://docquery.fec.gov/pdf/470/12970917470/12970917470.pdf>. The Cain Committee paid Pegasus for further use of the airplane on two more occasions: \$181,103.31 on December 1, 2011; and \$79,580 on December 6, 2011. *Id.* at 5105, 5125. In sum, the Cain Committee paid Pegasus \$516,108.01. *See* Cain Committee Resp. at 4.

⁶ Cain Committee Resp. at 2-3 (Aug. 9, 2016).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Pegasus Elite Aviation, Inc.

MUR 7056

I. INTRODUCTION

Complainant alleges that Pegasus Elite Aviation, Inc. ("Pegasus") made an in-kind contribution to Herman Cain and Friends of Herman Cain ("Cain Committee") by leasing them a jet at a below-market price. Pegasus denies this allegation. As discussed in further detail below, based on the available information, the Commission finds no reason to believe that Pegasus violated 52 U.S.C. § 30118(a) by making a prohibited contribution.

II. FACTUAL AND LEGAL ANALYSIS

The Federal Election Campaign Act of 1971, as amended, prohibits corporations from making contributions to any federal candidate or candidate committee. 52 U.S.C. § 30118(a).

The Complaint alleges that Pegasus, Adam H. Victor and two of his LLCs, Transnational Management Systems LLC ("TNMS") and Transnational Management Systems II, LLC ("TNMS II"), leased an airplane to the Cain Committee at a reduced price.¹ According to the Complaint, Victor owns Gulfstream jets through the two LLCs, and Pegasus, an outside firm, manages the jets.² The Complaint alleges that, pursuant to an agreement between the LLCs and Pegasus, the usual charter rate for use of the planes was \$5,000 per hour plus fuel and airport fees, but the Cain Committee was charged only \$25,000 for five days, plus fuel and airport fees, allegedly a 75% discount from the usual and normal charter cost.³ In other words, the

¹ MUR 7056 Compl. at 17 (¶ 80).

² *Id.* at 6-7 (¶¶ 31-34).

³ *Id.* at 8, 12 (¶¶ 40-42, 58-60).

1 Complainant alleges that Pegasus and other entities made in-kind contributions to the Cain
2 Committee worth \$75,000.⁴

3 Pegasus responds that the Cain Committee paid more than fair market value, not less, to
4 lease the plane owned by TNMS II.⁵ According to Pegasus, a customer would ordinarily pay an
5 hourly rate, and the typical charter rate at that time would have been \$5,000 per flight hour plus a
6 \$750 fuel surcharge.⁶ Under this calculation, the charge to Cain would have been \$171,925.⁷
7 The Cain Committee, however, paid separately for landings and fuel; these items are usually
8 rolled into the hourly charge.⁸ Cain paid a daily rate of \$5,000 for ten days, or \$50,000, plus
9 \$112,350.15 in fuel costs, and \$60,000 in landing fees for a total amount of \$222,350.15.⁹ Thus,
10 according to Pegasus, Cain actually paid substantially more than the normal and usual charge.¹⁰
11 A sworn declaration from a certified senior aircraft appraiser supports this argument.

⁴ *Id.* at 12-14 (¶¶ 61-63, 66-68).

⁵ Pegasus Resp. at 1, 6-8 (May 31, 2016). Pegasus is currently involved in a lawsuit with Victor. *See TransNational Management Systems, LLC et al. v. Pegasus Elite Aviation, Inc.* Ca. Spr. Ct., L.A. County, N.W. Dist., Case No. LC100724. The lawsuit is unrelated to the airplane service provided to the Cain Committee.

⁶ Pegasus Resp. at 5.

⁷ *Id.* at 6.

⁸ *Id.* at 7. Pegasus provided the invoices that the Cain Committee in fact paid for the flight services at issue, which reflect the \$5,000 daily charge. *Id.* Ex. 5.

⁹ The two Pegasus invoices at issue in this matter reflect additional charges for flight attendants, catering, charges, flight phone charges and airport fees. *See* Pegasus Resp., Ex. 5. The Cain Committee's 2011 Year-End Report discloses the payment of the two invoices with a \$596.98 discrepancy apparently reflecting the difference highlighted between the catering estimate and the total catering charges due (\$194,754.95 instead of \$195,351.93). *See* Cain Committee Amended 2011 Year-End Report (Apr. 12, 2012) at 5043, 5078, available at <http://docquery.fec.gov/pdf/470/12970917470/12970917470.pdf>; Pegasus Resp., Ex. 5. The Cain Committee paid Pegasus for further use of the airplane on two more occasions: \$181,103.31 on December 1, 2011; and \$79,580 on December 6, 2011. *Id.* at 5105, 5125. In sum, the Cain Committee paid Pegasus \$516,108.01.

¹⁰ Pegasus Resp. at 7.

1 Pegasus's Response and the other available information appear to sufficiently refute
2 Complainant's allegation. Accordingly, the Commission finds no reason to believe that Pegasus
3 Elite Aviation, Inc. violated 52 U.S.C. § 30118(a) by making a prohibited in-kind contribution in
4 connection with the aircraft lease to the Cain Committee.

1
7
0
4
4
4
4
2
4
5
5
4

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Adam H. Victor MURs 7005 and 7056
TransGas Development Systems, LLC
Transnational Management Services II, LLC

I. INTRODUCTION

Two Complaints, filed on February 1 and April 28, 2016, allege that Adam H. Victor or businesses that he owns or controls made \$63,000 in contributions in the names of others between March of 2011 and January of 2012 to two candidate committees, Manchin for West Virginia and Friends of Herman Cain, in violation of the Federal Election Campaign Act of 1971, as amended (the "Act").¹ The MUR 7056 Complaint further alleges, based on correspondence from November 2011 in the Complainant's possession, that Victor and other businesses made an in-kind contribution to Herman Cain and Friends of Herman Cain by leasing them a jet at a below-market price.

Respondents assert that the money Victor or one of his companies transferred to his employees and business associates was not for contributions, but for legitimate, non-political reasons. Further, they contend that the plane was leased at more than fair market value.

As explained more fully below, the record evidence supports a reasonable inference that Victor and one of his companies, TransGas Development Systems, LLC, made contributions in others' names. The record shows that several contributors received money from Victor and this company close in time to, and in the same amounts as, the contributions they made. Further, five of the contribution checks, which Victor's family members purportedly used to make

¹ Manchin for West Virginia is the principal campaign committee for Joe Manchin III, a candidate for the United States Senate from West Virginia in 2012. Friends of Herman Cain is the principal campaign committee for Herman Cain, a candidate for President in 2012.

1 contributions, were drawn on a bank account that Victor controlled, the checks did not have the
2 family members' names on them, and they were consecutively numbered. Finally, there is
3 information in the Commission's possession that Victor asked Complainant and individuals
4 working at a business involved in the airplane lease to make contributions that he would
5 reimburse.

6 Therefore, the Commission finds reason to believe that Adam H. Victor and TransGas
7 Development Systems, LLC, made contributions in the names of others. Regarding the airplane
8 lease, the Commission finds no reason to believe that Adam H. Victor or Transnational
9 Management Services II, LLC made an excessive or prohibited contribution because there is
10 sworn, expert information before the Commission that the Cain Committee paid at least fair
11 market rates for use of the plane.

12 II. FACTUAL AND LEGAL ANALYSIS

13 A. Contributions in the Name of Another

14 1. Facts

15 Victor owns and controls a variety of businesses, including TransGas Development
16 Systems, LLC ("TGDS"), Project Orange Associates, LLC ("POA"), and Adam Victor Grantor
17 Trust. Since 2002, Victor has made at least 41 contributions totaling more than \$212,000 to
18 Federal candidates and committees, including Manchin for West Virginia ("Manchin
19 Committee") and Friends of Herman Cain ("Cain Committee").²

² Victor contributed the maximum allowable amount to the Manchin Committee for the 2012 Primary and General Elections when he made two \$2,500 contributions on March 29, 2011, and made the maximum allowable contribution to the Cain Committee for the 2012 Primary Election when he contributed \$2,500 on January 17, 2012.

17044424556

1 Victor solicited contributions for Cain,³ and he served on the host committee for a
2 November 11, 2011, fundraiser for the Cain Committee.⁴

3 The Complainant, a former employee of Victor,⁵ alleges that Victor or his businesses
4 made contributions to the Cain Committees through "straw donors," who are Victor employees,
5 business associates, and family members. The potential violations arising from 10 such
6 allegedly reimbursed contributions between November 2011 and January 2012 have not expired
7 under the applicable five-year statute of limitations:⁶ a \$2,500 contribution to Cain dated two
8 days before the event; seven others totaling \$15,500 dated January 17, 2012, which may be
9 related to that event; and two \$2,500 contributions to the Manchin Committee on December 30,
10 2011.⁷

³ See Victor Resp., Victor Decl. ¶ 6.

⁴ See MUR 7056 Compl. at 9 (¶ 51) (Apr. 28, 2016). A copy of the event program identifying Victor as a member of the Host Committee for the event is attached to the Supplement to the MUR 7056 Complaint ("Supplement") (Photocopy of Invitation to Cain Fundraising Event) (June 21, 2016).

⁵ Complainant Tyler Erdman and Victor appear to have an acrimonious relationship and are involved in unrelated litigation.

⁶ 28 U.S.C. § 2462.

⁷ Of the eight contribution checks made payable to the Cain Committee, only one, which was dated November 9, 2011, was received about the same time as the November 11, 2011, fundraiser. The Complaint and the Cain Committee's disclosure reports show the other contributions were received on January 17, 2012. Cain Committee 2012 April Quarterly Report (Apr. 13, 2012) at 12, 14, 16, and 17, available at <http://docquery.fec.gov/pdf/063/12970923063/12970923063.pdf>.

17044424557

2. Analysis

a. Payments to Victor Employees and Business Associates Match the Contribution Amounts

The allegation that Victor paid employees and business associates amounts that matched the amounts of their contributions is supported by copies of checks, provided in the Victor Response, made payable to two of the alleged straw donors.⁸

Randall Harris, a business associate of Victor, contributed \$2,500 to the Manchin Committee on December 30, 2011, one day after a \$2,500 check payable to Harris was drawn on an account of one of Victor's businesses, TGDS.⁹ Harris denies he was an employee of Victor, and explains that at the time of the contributions at issue, the Mingo County Redevelopment Authority retained him to advance one of TGDS's projects, building a coal-to-gas plant in West Virginia.¹⁰ Harris acknowledged receiving \$2,500 from TGDS through a check dated December 29, 2011, but stated that it was a reimbursement for travel expenses.¹¹

Nana Yoshioka, who at the time was Victor's personal assistant and a technical coordinator at (POA), a Victor business,¹² contributed \$2,500 to the Cain Committee on January

⁸ The Complaint also alleged contributions in the name of another involving some of the same alleged straw donors totaling \$40,000 to the Manchin Committee on or about March 29, 2011, activity that is now beyond the statute of limitations. See MUR 7005 Compl. at 5, 7, 14, 16, 17, 19, and 20 (¶¶ 17, 25, 67, 76, 85, 94, and 103). Each of the nine contributors who made a contribution to Manchin at the time of the March 29, 2011, fundraiser also contributed \$2,400 to Manchin on September 29, 2010, the maximum allowable limit at that time. Manchin Committee 2010 October Quarterly Report (Oct. 15, 2010), *available at* <http://docquery.fec.gov/pdf/290/10020881290/10020881290.pdf>. These contributions were not noted in either Complaint and are also beyond the statute of limitations.

⁹ The TGDS check, identified in the Complaint as check number 1252 but identified in the Victor Response as number 1256, lists "Reimbursement" on the "For" line. See MUR 7005 Compl. at 9 (¶¶ 35-36); Victor Resp., Harris Decl. (photocopies of checks accompanying Declaration).

¹⁰ Harris Resp. (Feb. 18, 2016)

¹¹ Victor Resp. at 10, Harris Decl. ¶ 2.

¹² Victor Resp., Yoshioka Decl. ¶ 3.

1704424558

1 17, 2012. The record includes evidence that TGDS issued a \$2,500 check to her on November 9,
2 2011, two days before the November 11, 2011, Cain Committee fundraiser in New York.¹³
3 Yoshioka states that the funds she received were a reimbursement for an IRA contribution.¹⁴

4 Marta Dani (formerly known as Marta Grabowska), POA's comptroller at the time of her
5 contribution, made a \$2,500 contribution to the Cain Committee on November 9, 2011.¹⁵ She
6 allegedly received payments from Victor or one of his companies matching the amount of this
7 contribution and \$5,000 she contributed to the Manchin Committee that is now beyond the
8 statute of limitations.¹⁶ She stated that the funds she received were a reimbursement for interior
9 design purchases and a contribution to her IRA.¹⁷ Victor's Response includes a 2011 federal tax
0 form for Dani dated May 22, 2012, showing an undated \$2,500 contribution to her IRA.¹⁸

1 Garry Coulter, an executive at the company responsible for providing insurance to
2 Victor's businesses,¹⁹ made a \$2,500 contribution to the Manchin Committee on December 30,
3 2011, and a \$500 contribution to the Cain Committee on January 17, 2012. The MUR 7005
4 Complaint alleges that Victor or his businesses control bank accounts at Signature Bank, and

¹³ See Victor Resp., Yoshioka Decl. (photocopies of checks accompanying Declaration); Yoshioka previously made two \$2,500 contributions to the Manchin Committee on March 29, 2011, seven days after Victor issued a \$5,000 check from his personal account to Yoshioka.

¹⁴ Victor Resp., Yoshioka Decl. ¶ 3.

15 Victor Resp., Dani Decl. ¶ 2.

¹⁶ The Victor Response did not provide copies of any checks made payable to Dani.

¹⁷ Victor Resp., Dani Decl. ¶ 3.

18 *Id.*

¹⁹ At the time that he attended the November 2011 Cain Committee fundraiser and made the December 30, 2011, contribution to the Manchin Committee, Coulter worked at USA Risk Intermediaries, LLC, as an Executive Vice President. *See USA Risk Intermediaries, LLC, Resp.* (May 26, 2016).

1 checks from those accounts were issued to Coulter on or about the dates of the contributions.²⁰
2 There are no checks or other documents currently in the record corroborating the Complaint's
3 allegations. Coulter denies acting as "straw man" and initially replied that the funds paid to him
4 were for consulting services.²¹ In a subsequent sworn declaration, Coulter states that the
5 unidentified payments were not paid to him.²²

6 b. Victor Family Contribution Checks from One Account

7 The January 17, 2012, contributions from Victor's wife (Jo-Ann Bruggemann) and his
8 four children (Adam, Alexia, Alia, and Jo-Ayla Victor)²³ appear to have been made from one
9 checking account that Victor apparently owned or controlled. According to the MUR 7056
10 Supplement, around the time of the November 11, 2011, Cain fundraiser, Victor presented five
11 \$2,500 checks to the Cain Committee that did not show the names of the contributors.²⁴ A Cain
12 Committee representative emailed Garry Coulter and asked him to help identify the five
13 contributors.²⁵ The Cain Committee later sent Coulter a spreadsheet that lists Victor, his wife,
14 and his children as contributors. According to this spreadsheet, the contributions by Victor's
15 family were made with sequentially numbered checks.²⁶ The Cain Committee ultimately
16 disclosed the contributor information set forth on the spreadsheet.

²⁰ MUR 7005 Compl. at 10 (¶ 46). Coulter did not provide copies of any checks allegedly made out to him.

²¹ Coulter Resp. (Feb. 18, 2016) (response filed solely by Coulter prior to the Victor Response).

²² Victor Resp., Garry Coulter Decl. ¶ 3.

²³ It appears that all four of Victor's children were at least 19 years old at the time of the contributions.

²⁴ Supplement at 4 (¶¶ 10, 13) (June 21, 2016).

²⁵ The Supplement to the MUR 7056 Complaint contains copies of these emails. *Id.* at 5-7 (¶ 15-22).

²⁶ *Id.* at 7 (¶ 22), Ex. E.

0054244071

1 In his original Complaint in MUR 7056, the Complainant alleged that Victor arranged for
2 the contributions by his children in one of three possible ways.²⁷ The Supplement to that
3 Complaint, however, specifically alleges that Victor instructed Larrinaga to withdraw \$12,500
4 from one of Victor's Signature Bank accounts in Victor's name, or in the name of one of the
5 businesses that he controlled, to cover the five checks that were generated to make contributions
6 to the Cain Committee.²⁸

7 Each of the family members submitted sworn declarations averring that, "The
8 unidentified payments were not paid to" them.²⁹ The Victor Respondents challenge the validity
9 of the Complaints and Supplement.³⁰

10 c. Allegations that Victor Attempted to Make Other Contributions in
11 the Names of Others
12

13 Complainant alleges that Victor asked him and individuals working at a company with
14 which Victor did business to participate in the alleged reimbursement scheme. Complainant
15 alleges that Victor solicited him to be a "straw donor" shortly before the November 2011 Cain

²⁷ Compl. at 16 (¶ 16), MUR 7056.

²⁸ *Id.* at 8 (¶ 26). The Complainant maintains that he overheard Victor talking on the phone to Larrinaga in early November 2011 about generating checks for the Cain Committee fundraiser. *Id.* at 8 (¶ 27).

²⁹ See Victor Resp., Declaration of Jo-Ann Bruggemann.

³⁰ Victor Resp. to Supplement (July 25, 2016). Respondents assert that the MUR 7005 and MUR 7056 Complaints should be dismissed because the source of the information contained in the Complaints was not based on the Complainant's personal knowledge, and he has not identified the source of his information. *Id.* at 2. Respondents rely upon 11 C.F.R. § 111.4(d)(2), which requires that a complaint identify the complainant, be sworn and signed, and that the allegations in a complaint "not based upon personal knowledge" should identify the source of the information that "gives rise to the complainant's belief in the truth of such statements." Thus, the Commission's regulations do not require that complaints be based solely on personal knowledge or prohibit complaints based in information provided by third parties. On July 27, 2016, Victor filed another response that also did not address the allegation that the checks for the Victor family contributions were sequentially numbered. Victor Resp. to Supplement (July 27, 2016). Respondents continued to argue that the Complaint should be dismissed and refer to the Complainant's recent deposition testimony in a civil suit concerning his alleged lack of personal knowledge of the banking information cited in both Complaints.

160444407

1 fundraiser, but Complainant refused.³¹ The Commission has information that Victor also asked
2 individuals working at the company to contribute to various political candidates and promised
3 that he would reimburse them. This information tends to corroborate the allegations of
4 completed contributions in the names of others.

5 d. The Available Information Supports Finding Reason to Believe
6 that Victor and One of his Companies Made Contributions in the
7 Names of Others
8

9 The Act provides that a contribution includes "any gift, subscription, loan, advance, or
10 deposit of money or anything of value made by any person for the purpose of influencing any
11 election for Federal office."³² The term "person" for purposes of the Act and Commission
12 regulations includes partnerships, corporations, and "any other organization or group of
13 persons."³³ The Act prohibits corporations from making contributions to any federal candidate
14 or political committee and prohibits corporate officers and directors from consenting to such
15 contributions.³⁴ An LLC that elects to be treated as a corporation by the Internal Revenue
16 Service or an LLC with publicly traded shares shall be considered a corporation for contribution
17 purposes.³⁵ A contribution from an LLC that elects to be treated as a partnership shall be
18 attributed to its members in direct proportion to their shares of the profits, or by agreement of the
19 partners, subject to restrictions,³⁶ or, in the case of a single-member LLC, to its sole member.³⁷

³¹ Supplement at 8 (¶ 28); MUR 7056 Compl. at 14 (¶ 70). Neither the Manchin Committee nor the Cain Committee disclosed any contribution from Complainant.

³² 52 U.S.C. § 30101(8)(A).

³³ *Id.* § 30101(11); 11 C.F.R. § 100.10.

³⁴ 52 U.S.C. § 30118(a).

³⁵ 11 C.F.R. § 110.1(g)(3), (e)(1)-(2).

³⁶ *Id.* § 110.1(g)(2), (e)(1)-(2).

26544244071

1 In the 2012 election cycle, the Act prohibited a person from making contributions to a candidate
2 which, in the aggregate, exceeded \$2,500 per election.³⁸ The Act further provides that no person
3 shall make a contribution in the name of another or knowingly permit his name or her to be used
4 to effect such a contribution.³⁹

5 The available information supports a reasonable inference that Victor and TGDS made
6 contributions in the names of others. Several of the alleged conduits acknowledge that they
7 received payments from Victor or his companies close in time to, and in the exact amounts of
8 their respective contributions. In addition, the sequentially numbered checks Victor's family
9 members purportedly used to make contributions all came from an account Victor apparently
10 controlled, and those checks did not have the contributors' names on them.

11 The alleged conduits offer a variety of explanations for the contemporaneous transfers of
12 funds they received in the same amounts as the contributions they made. Despite these
13 explanations, we find that there is a reasonable inference that the funds they received were to
14 reimburse their contributions.

15 Other than the contributions at issue here, almost all of the alleged conduits have scant
16 contribution histories. Indeed, most of the alleged conduits have made no other contributions
17 besides their contributions to the Manchin and Cain Committees.⁴⁰

³⁷ *Id.* § 110.1(g)(4).

³⁸ *Id.* See 11 C.F.R. § 110.1(b)(1).

³⁹ 52 U.S.C. § 30122. See also 11 C.F.R. § 110.4(b); *United States v. O'Donnell*, 608 F.3d 546, 549, 553 (9th Cir. 2010).

⁴⁰ Before his contributions in 2011 and 2012, Gary Coulter made eight contributions totaling \$4,750, according to the FEC contributor database. Alexia Victor, Jo Ann Bruggemann, and Randall Harris are the only other alleged conduits who have made a contribution to an entity other than the Manchin and Cain Committees. Victor (as an 18 year-old student) and Bruggemann contributed \$6,000 and \$10,000, respectively, to the WV State Democratic Executive Committee on October 25, 2010, the same date that Victor made a \$10,000 contribution to

As for Victor, only one paragraph of his 21-paragraph Declaration addresses the conduit contribution allegation. Victor explains:

[t]o the best of [his] knowledge...the payments and/or checks alleged in the complaints as being reimbursements for the identified contributions were, with respect to Marta Dani, Nana Yoshioka and Gary [sic] Coulter, as stated in their declarations - strictly for business, employee IRA contributions or personal purposes, or with respect to the remaining individual respondents, as stated in their declarations - were not made at all.⁴¹

Victor does not specifically deny that he reimbursed the contributions; he merely relies on the declarations of the alleged conduits. However, these conduits did not swear that they made contributions with their own funds, nor did they expressly deny that Victor or one of his businesses made contributions in their names. Instead, Harris, Yoshioka, and Dani swear that the payments were for other purposes, such as travel reimbursements, dental expenses, IRA contributions, and home furnishings.⁴² However, it is improbable that all of these activities had the same value, \$2,500, and they all happened at about the same time. Victor's Declaration also does not specifically mention another alleged conduit, Randall Harris, among the individuals whose reimbursements were "strictly for business."⁴³

Further, Garry Coulter and all of Victor's family members signed sworn Declarations that contain the same sentence: "*unidentified payments and/or checks referenced in [the MUR 7005*

the same committee. WV State Democratic Executive Committee 2010 Post-General Report at 11,12 (Dec. 2, 2010), available at http://docquery.fec.gov/pdf/133/10992359133/10_992359133.pdf. And only Harris has made another federal contribution since the alleged reimbursements: On June 26, 2014, he made a \$250 contribution to the Nick Rahall campaign. See Keep Nick Rahall in Congress Committee 2014 July Quarterly Report at 67 (July 15, 2014), available at http://docquery.fec.gov/pdf/686/14961621686/1496162168_6.pdf.

⁴¹ Victor Resp., Adam H. Victor Decl. ¶ 7.

⁴² Victor Resp., Harris Decl. ¶ 2, Yoshioka Decl. ¶ 3, Dani Decl. ¶ 3.

⁴³ *Id.* In contrast, the unsworn portion of the Victor Response describes Harris's reimbursement as "strictly for business" but omits such a description of Coulter's contribution from the group. Victor Resp. at 4.

1 *Complaint*] were not paid to [Respondent].”⁴⁴ But these brief declarations supply no other facts,
2 except to verify that each declarant is a Respondent and to explain how they are related to Victor.
3 They do not explain why the Cain Committee needed help determining who made which
4 contribution or why the contribution checks associated with the Victor family members were
5 consecutively numbered. In fact, these Respondents do not even acknowledge they made
6 contributions. Indeed, the brief Declarations are not inconsistent with Victor simply paying for
7 their contributions.

8 In summary, the available information, including the match between the amounts Victor
9 or his companies paid the contributors and the amount of their contributions, the timing of these
10 payments, the improbability that these events are coincidental, the sequential numbering of the
11 family contribution checks, the lack of information in the Respondents’ denials, and the paucity
12 of other contributions by the alleged conduits all support the conclusion that Victor or his
13 companies made contributions in the names of others.⁴⁵

14 Accordingly, the Commission finds reason to believe that Adam H. Victor and TGDS
15 violated 52 U.S.C. §§ 30116(a) or 30118(a),⁴⁶ and 30122 by making excessive or prohibited
16 contributions in the names of others to the Manchin and Cain Committees.

⁴⁴ Victor Resp., Coulter Decl. ¶ 3; see Declarations of Jo-Ann Bruggemann, Alexia Victor, Alia Victor, Jo-Ayla Victor, and Adam Victor, Jr. Coulter’s Declaration attached to the joint Victor Response is not nearly as specific as his earlier unsworn response to the MUR 7005 Complaint, which he filed individually. In the earlier response, Coulter explicitly denies participating in a straw-donor scheme and claims all of the payments he received were for management consulting services. Coulter Resp. at 1-2.

⁴⁵ See, e.g., MUR 6234 (Arlén B. Cenac, Jr., *et al.*) (Commission found reason to believe respondent knowingly and willfully violated the Act by directing the assistant manager of a bank to prepare six cashiers’ checks made payable to a political committee and listed the names and addresses of the “remitters” along with the specific amounts to appear on each check).

⁴⁶ We note that certain facts — such as the tax status of TGDS — are unclear. We intend to discover that information during the proposed investigation.

17044442456

1 The Act also addresses violations of law that are knowing and willful.⁴⁷ The knowing
2 and willful standard requires knowledge that one is violating the law.⁴⁸ A violation of the Act is
3 considered knowing and willful if the “acts were committed with full knowledge of all the
4 relevant facts and a recognition that the action is prohibited by law.”⁴⁹ Evidence does not have
5 to show that the respondent had a knowledge of the specific statute or regulation allegedly
6 violated, just that the respondent acted voluntarily and was aware that his conduct was unlawful;
7 an inference of knowing and willful conduct may be drawn from the defendant’s scheme to
8 disguise the source of funds used in illegal activities.⁵⁰ As there is information in the current
9 record that could be viewed as suggesting that Victor and/or his businesses engaged in knowing
10 and willful activity by making contributions in the name of another, an investigation is needed to
11 resolve this issue.

12 **B. Alleged Excessive Contribution in the form of a Below-Market Airplane**
13 **Lease (MUR 7056)**
14

15 The Complaint alleges that Transnational Management Systems LLC (“TNMS”) and
16 Transnational Management Systems II, LLC (“TNMS II”), two LLCs of Adam H. Victor, leased
17 an airplane to the Cain Committee at a reduced price.⁵¹ According to the Complaint, Victor
18 owns Gulfstream jets through the two LLCs, and an outside firm, Pegasus Elite Aviation, Inc.

⁴⁷ See 52 U.S.C. §§ 30109(a)(5)(B) and 30109(d).

⁴⁸ *Federal Election Commission v. John A. Dramesi for Congress Committee*, 640 F. Supp. 985, 987 (D. N.J. 1986).

⁴⁹ 122 Cong. Rec. 12, 197, 12,199 (May 3, 1976).

⁵⁰ *United States v. Danielczyk*, 917 F. Supp. 2d 573 (E.D. Va 2013).

⁵¹ MUR 7056 Compl. at 17 (¶ 80).

1 ("Pegasus"), manages the jets.⁵² The Complaint alleges that, pursuant to an agreement between
2 the LLCs and Pegasus, the usual charter rate for use of the planes was \$5,000 per hour plus fuel
3 and airport fees, but the Cain Committee was charged only \$25,000 for five days, plus fuel and
4 airport fees, allegedly a 75% discount from the usual and normal charter cost.⁵³ In other words,
5 the Complainant alleges that the LLCs and Victor made in-kind contributions to the Cain
6 Committee worth \$75,000.⁵⁴

7 The available information suggests that the Cain Committee paid at least fair market
8 value to lease the plane owned by TNMS II. According to the available information, a customer
9 would ordinarily pay an hourly rate, and the typical charter rate at that time would have been
10 \$5,000 per flight hour plus a \$750 fuel surcharge. Under this calculation, the charge to Cain
11 would have been \$171,925. However, there is information before the Commission that the Cain
12 Committee paid separately for landings and fuel; these items are usually rolled into the hourly
13 charge. Cain paid a daily rate of \$5,000 for ten days, or \$50,000, plus \$112,350.15 in fuel costs,
14 and \$60,000 in landing fees for a total amount of \$222,350.15. Thus, according to the available
15 information, Cain actually paid at least the normal and usual charge. A sworn declaration from a
16 certified senior aircraft appraiser supports this argument.

17 The available information, which includes a sworn declaration from an apparently expert
18 appraiser, appears to sufficiently refute Complainant's allegation, and there is no contrary
19 information. Accordingly, the Commission finds no reason to believe that Adam H. Victor
20 or Transnational Management Systems II, LLC violated 52 U.S.C. §§ 30116(a) or 30118(a).

⁵² *Id.* at 6-7 (¶¶ 31-34).

⁵³ *Id.* at 8, 12 (¶¶ 40-42, 58-60).

⁵⁴ *Id.* at 12-14 (¶¶ 61-63, 66-68).